

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CUSTOM PRODUCT CONTRACT
FOR
FULL LOAD SERVICE
WITH

FULL LOAD SERVICE CUSTOMER

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1. PREAMBLE:

This Contract is made this ____ day of _____, 2004, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION, Department of Energy, hereinafter called Western, represented by the officer executing this Contract, or a duly appointed successor, also sometimes hereinafter called the Contracting Officer; and the FULL LOAD SERVICE CUSTOMER, hereinafter referred to as FLS or Contractor, a type of entity, its successors or assigns; also hereinafter referred to individually as Party and together as Parties.

2. EXPLANATORY RECITALS:

2.1 The Parties entered into Base Resource Contract 00-SNR-003__ on _____, 2000. The Base Resource Contract provides the terms and conditions whereby Western will provide Base Resource Electric Service to FLS.

2.2 At times, power provided under the Base Resource Contract will not be sufficient to meet the electrical needs of FLS at the delivery point(s) specified herein.

2.3 Western's final 2004 Power Marketing Plan, published in the Federal Register on June 25, 1999 (64 FRN 34417), provides for Western to develop Custom Products for customers who request them. Section [8.7] of the Base Resource Contract allows for Western to develop a Custom Product for FLS.

2.4 FLS has requested and Western is willing to provide a Custom Product in the form of Supplemental Power to meet the load at a specific delivery point(s).

2.5 FLS has also requested and Western is also willing to provide Portfolio Management Services.

/w/o TPPSC 2.6 Western and FLS recognize that, due to load diversity, there may be benefits to aggregating some Full Load Service Customers' Base Resource Percentages and Supplemental Power requirements for power purchases. Additional business efficiencies may be realized through consolidation of power scheduling and related activities.]

/w/TPPSC 2.6 FLS has power purchase contracts with power suppliers other than Western. FLS has requested and Western is willing to provide Portfolio Management Services for power provided under these contracts.]

3. AGREEMENT:

The Parties agree to the terms and conditions set forth herein.

4. EFFECTIVE DATE AND TERM OF CONTRACT:

4.1 This Contract shall become effective upon execution by the Parties and shall remain in effect until September 30, 2010.

4.2 Service under this Contract shall begin January 1, 2005.

4.3 Western may suspend or terminate service under this Contract pursuant to Section 15.

4.4 All obligations incurred under this Contract shall be preserved until satisfied.

5. DEFINITION OF TERMS:

As used herein, the following terms whether singular or plural, or used with or without initial capitalization, shall have the following meanings:

5.1 “Base Resource” means CVP and Washoe Project power output, as determined by Western to be available for marketing, after (1) meeting the requirements of Project Use and First Preference Customers, and (2) any other adjustments required for maintenance, regulation, reserves, transformation losses, and ancillary services.

5.2 “Custom Product” means a combination of products and services, excluding provisions for load growth, which may be made available by Western per Customer request, using the Customer’s Base Resource and supplemental purchases made by Western.

5.3 “Full Load Service Customer” means a Customer that will have its entire load at the delivery point(s) specified in Exhibit A met with Western power [*w/TPPSC* and Third-Party Power], and whose Portfolio Management functions for said delivery point(s) will be performed by Western.

5.4 “Portfolio Management Services” means determining balanced hourly load and resource schedules for a customer.

5.5 “Scheduling Coordinator” means an entity that is responsible for providing hourly load and resource schedules to the control area operator, in accordance with the protocols specified in the Control Area Operator’s Federal Energy Regulatory Commission-approved tariff.

5.6 “Supplemental Power” means firm capacity and energy, provided by Western, that a customer(s) needs in addition to its Base Resource for use in meeting the customer’s load.

[w/TPPSC 5.7 “Third-Party Power” means power from a power supply contract(s) that FLS has with a power supplier other than Western which may be scheduled to FLS’s load in addition to or in place of Supplemental Power under this Contract to meet FLS’s entire load at the delivery point(s) specified in Section 3 of Exhibit A and other point(s) as may be agreed to by the parties.

5.8 “Third-Party Power Supply Contract (TPPSC)” means an agreement FLS has to purchase energy from an entity other than Western.]

6. SUPPLEMENTAL POWER FURNISHED BY WESTERN:

6.1 Western will provide additional power to those Full Load Service Customers whose loads exceed their Base Resource. [w/o TPPSC Western may aggregate the needs of Full Load Service Customers to determine Supplemental Power requirements.]

6.2 Supplemental Power provided by Western may include long-term, short-term, day-ahead, and hour-ahead purchases, and/or other arrangements.

6.3 Any Supplemental Power in excess of the Full Load Service Customers' forecasted hourly load may be sold by Western.

7. DELIVERY ARRANGEMENTS:

Western will make FLS's Supplemental Power available at the point(s) of delivery, as specified in Section 3 of Exhibit A.

8. PORTFOLIO MANAGEMENT SERVICES:

8.1 Western will need load data and other information to determine the power necessary to meet FLS's load. If Western does not have access to the information it needs, Western will request it from FLS. FLS shall provide load data and any other requested information within thirty (30) days of a request from Western. Said load data may include, but is not limited to, the following:

8.1.1 Historical hourly load data from the delivery point(s) specified in Section 3 of Exhibit A; [*w/o TPPSC* and]

8.1.2 Expected future loads at the delivery point(s) specified in Section 3 of Exhibit A during the term of this Contract [*w/TPPSC* ; and,

8.1.3 Third-Party Power Supply Contracts and related transmission contracts].

8.2 By October 1 of each year, FLS will submit to Western its annual planned power usage for the upcoming calendar year. FLS shall provide this information to Western in a format agreed to between the Parties. FLS must provide any planned significant changes in its power usage to Western. The information provided by FLS will be used by Western in determining daily power schedules for FLS.

[*w/TPPSC* 8.3 FLS shall provide to Western copies of Third-Party Power Supply Contracts and related transmission contracts. Each contract must allow for Western to

schedule power and/or transmission on behalf of FLS. Sole responsibility for billing and payment for transactions related to these contracts shall remain with FLS.

8.4 During the term of this Contract, ten (10) days prior to the beginning of each month, FLS shall prepare the guidelines that it wants Western to follow in the scheduling of power and transmission for FLS under the contracts referenced in Section 8.3.]

8.5 On a daily basis, using the information provided in Sections 8.1 [w/o **TPPSC** and] 8.2 [w/**TPPSC** , and 8.4], Western will determine hourly schedules of the power necessary to fully serve FLS's load at the delivery point(s) specified in Exhibit A, as follows:

8.5.1 Using the information as provided in Section 8 of FLS's Base Resource Contract, Western will determine the hourly use of FLS's Base Resource for the day.

8.5.2 If FLS's Base Resource does not fully meet FLS's forecasted load, Western will schedule FLS's share of exchange program energy, if any, to serve FLS's load.

8.5.4 Once all Base Resource and exchange program energy has been distributed, Western will meet FLS's unmet forecasted load with Supplemental Power [w/**TPPSC** and/or Third-Party Power].

8.5.5 Any Base Resource in excess of FLS's forecasted load will be retained by Western for distribution under the exchange program in accordance with Exhibit B to FLS's Base Resource Contract with Western.

8.5.6 After Western has balanced the hourly load and resource schedule for FLS, Western will provide the schedule to FLS's Scheduling Coordinator.

[w/**TPPSC** 8.6 Using the information submitted by FLS pursuant to Section 8.4 above, and any contracts that FLS has entered into for the purchase of power and transmission, Western shall prepare hourly pre-schedules of Third-Party Power and transmission

needed to meet FLS's load. Western will only use Third-Party Power and transmission contracts that meet the requirements of Section 8.3 to prepare FLS's hourly pre-schedules. In conjunction with such service, FLS will provide a contact person and an alternate that can be contacted by Western during normal business hours.]

8.7 During the active day, Western will use best efforts to take the appropriate actions necessary to balance loads and resources.

8.8 Western shall not be liable in the event that power is scheduled either in excess of or below FLS's hourly loads.

8.9 Western shall not be liable in the event that transmission is scheduled either in excess of or below the amount needed to transmit power to FLS.

9. ADDITIONAL SERVICES NECESSARY TO PROVIDE CUSTOM PRODUCT(S):

FLS understands that additional services, including but not limited to, scheduling the resource and control area services may be necessary to provide the Custom Product(s) requested under this Contract.

10. SCHEDULING, METERING, AND TRANSMISSION ORGANIZATIONS:

All services provided by Western to FLS under this Contract will be subject to the same Scheduling and Metering terms and conditions and Transmission Organization Protocols as provided under FLS's Base Resource Contract with Western the same as if they had been expressly set forth herein.

11. WESTERN RATES:

11.1 FLS shall pay for electric and related services furnished hereunder in accordance with the rates, charges, and conditions set forth in the CVP schedules of rates, effective January 1, 2005, or any superseding rate schedule.

11.2 FLS shall be responsible for all costs incurred by Western to provide Full Load Service as specified in this Contract.

12. GENERAL POWER CONTRACT PROVISIONS:

12.1 The GPCP, effective July 10, 1998, attached hereto, are hereby made a part of this Contract, the same as if they had been expressly set forth herein; Provided, That, for the term of this Contract, FLS hereby agrees to waive its rights under this Contract to Article 11 of the GPCP.

13. [REIMBURSABLE FINANCING: FOR FEDERAL CUSTOMERS ONLY then skip to Section 15

13.1 Western may purchase power or provide other services using reimbursable authority pursuant to the Economy Act, 31 U.S.C. 1535. Reimbursable financing establishes the budgetary resource to fund Western's reimbursable financing program. Western's reimbursable authority shall not exceed the fiscal year (presently October 1st of the current calendar year through September 30th of the following calendar year) estimated costs related to power and other services provided by Western. Reimbursable financing under this Contract is limited to the total value of the Custom Product(s) provided by Western.

13.2 Each February 1st, FLS shall provide written notification to Western of its budgeted appropriations, or forecasted plan for budget requests for power and other

services provided by Western, for the upcoming fiscal year. FLS shall inform Western of any major changes to the forecasted budgeted authority.

13.3 FLS will obligate or otherwise commit the value of the Custom Product(s) to be provided by Western in a manner that is standard for the agency for the fiscal year.

13.4 Each monthly power bill issued by Western to FLS will identify the portion of such bill that will be designated as reimbursable.]

[CREDITWORTHINESS: FOR ALL CUSTOMERS EXCEPT FEDERAL

For the purpose of determining the ability of FLS to meet its obligations related to service hereunder, Western may require reasonable credit review procedures. In addition, Western may require FLS to:

13.1 Provide and keep in effect during the term of this Contract, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Contract; or,

13.2 Provide an alternate form of security acceptable to Western.

14. ADVANCE FUNDING:

Unless otherwise agreed to by the Parties, the following advance funding language shall apply. Any alternative method of advance funding shall be set forth in a separate contractual agreement.

14.1 Western shall use advanced funds for Supplemental Power costs. Western will bill FLS for the other services provided under this Contract as necessary.

14.2 Western will estimate the initial amount of funds required, and FLS shall deposit that amount into a Western trust account. The estimate for the advance shall be based on

three or more months of costs that Western anticipates incurring when providing Supplemental Power to FLS.

14.3 The advance funding amount determined by Western in accordance with Section 14.2 shall be due on the date specified on the initial bill for collection. The initial bill for collection will be issued at least ninety (90) days prior to Western acquiring the resources necessary to provide Supplemental Power to FLS.

14.4 FLS shall be required to maintain a trust account balance of at least three (3) months of estimated Supplemental Power purchase costs. Western shall monitor the trust account balance and if, at any time, Western determines that:

14.4.1 There are not sufficient funds in the trust account, Western shall notify FLS, and FLS shall advance the requested amount of funds to Western within ten (10) days; or,

14.4.2 If excessive funds accumulate in the trust account, Western, at Western's discretion, will either 1) reduce the following month's advance funding amount; or, 2) return the difference to FLS.

14.5 Funds that FLS advances to Western for Supplemental Power provided under this Contract shall be sent via wire transfer in accordance with the information included on the Western bill for collection or as Western otherwise directs or agrees.

14.6 FLS understands and agrees that, if economically beneficial to FLS, Western may combine the advanced funds from some or all Full Load Service Customers to purchase Supplemental Power.

14.7 Western will provide FLS with:

14.7.1 A monthly statement of the transactions that were posted to the trust account, and the end-of-month balance in the account;

14.7.2 A bill for collection for the costs that Western anticipates it will incur while providing Supplemental Power to FLS for the following month, if necessary; and,

14.7.3 An electric service bill that may reflect Supplemental Power costs and any associated credits for advanced payments of such costs.

14.8 Western shall be under no obligation to provide service hereunder without FLS advancing sufficient funds and said funds being available in the Western trust account described herein.

14.9 Western shall return any funds that FLS advances under this Contract in excess of Western's actual total costs incurred, without interest, to FLS within sixty (60) days of termination of this Contract.]

15. DEFAULT PROVISIONS:

15.1 The failure of FLS to perform any of its payment obligations under this Contract shall constitute a default. If Western determines FLS to be in default, Western shall promptly notify FLS in writing. If FLS has not cured the default within seven (7) days, Western may suspend service under this Contract.

15.2 If FLS is determined to be in default and does not cure such default in a manner and within the timeframe established or allowed by Western, Western shall have the right to terminate this Contract, and assess damages, as follows:

15.2.1 If Western's aggregate gains exceed its aggregate losses and costs, Western, after any set-off, shall make no payment to FLS and, notwithstanding anything in this Contract to the contrary, the amount by which such gain exceeds the losses and costs for the purposes of this Contract shall be zero (0); or,

15.2.2 If Western's aggregate gains do not exceed its aggregate losses, Western will promptly calculate the damages associated with the default. As soon as practical, Western will provide notice to FLS of the amount of the damages. Payment for the damages shall be made by FLS to Western within ten (10) business days after such notice is received.

16. ENFORCEABILITY:

It is not the intent of the Parties that this Contract confer any rights on third parties to enforce the provisions of this Contract except as required by law or express provision in this Contract.

Except as provided in this Section, this Contract may be enforced, or caused to be enforced, only by Western or FLS, or their successors or assigns.

17. EXHIBITS MADE PART OF CONTRACT:

Exhibit A (Full Load Service) existing under this Contract may vary during the term hereof.

Said Exhibit shall become a part of this Contract during the term fixed by its provisions. Exhibit A is attached hereto, and shall be in force and effect in accordance with its terms until superseded by a subsequent Exhibit, as allowed by the terms of the Exhibit, or terminated.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed the day and year first above written.

FULL LOAD SERVICE CUSTOMER

By:

Title:

Address:

WESTERN AREA POWER ADMINISTRATION

By:

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, California 95630

Exhibit A
(Full Load Service)

1. This Exhibit A, to be effective under and as a part of Contract 04-SNR-00____, shall become effective January 1, 2005, and shall remain in effect until either superseded by Exhibit A, Revision 1, or termination of the Contract.
2. On the effective date of this Exhibit A, Western will serve FLS's load up to _____ MWh, at a maximum rate of delivery of _____ MW.
3. Power provided under this Contract will be delivered to _____.
4. All power deliveries provided under this Contract shall be adjusted for the applicable transformation and transmission losses.